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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 VALERIE E.,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Deputy
Commissioner of Social Security for
Operations

14 Defendant.

Case No. 3:18-cv-05163-TLF

ORDER AFFIRMING THE
COMMISSIONER'S DECISION TO
DENY BENEFITS

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16 Plaintiff appeals the Commissioner's denial of her applications for disability insurance
17 and supplemental security income (SSI) benefits. The parties have consented to have this matter
18 heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil Procedure
19 73; Local Rule MJR 13. For the reasons set forth below, the Commissioner's decision is
20 affirmed.
21

22 PROCEDURAL BACKGROUND

23 On October 27, 2014, plaintiff applied for disability insurance and SSI benefits. Dkt. 6,
24 Administrative Record (AR) 18. She alleges she became disabled beginning June 1, 2013. *Id.*
25

1 The Commissioner denied the applications on initial administrative review and on
2 reconsideration. AR 18. Following a hearing, an administrative law judge (ALJ) employed the
3 Commissioner's five-step sequential evaluation process to find could perform other jobs existing
4 in significant numbers in the national economy at step five of that process, and therefore that she
5 was not disabled at that step. AR 18-34.

6 Plaintiff seeks reversal of the ALJ's decision and remand for further administrative
7 proceedings, arguing the ALJ erred in failing to discuss significant probative evidence of
8 plaintiff's Crohn's disease, both in regard to assessing her credibility concerning her symptom
9 testimony and in determining her residual functional capacity ("RFC").

10 For the reasons set forth below, the Court affirms the ALJ's decision.

11 STANDARD OF REVIEW

12 The Court will uphold an ALJ's decision unless it is: (1) based on legal error; or (2) not
13 supported by substantial evidence. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).
14 Substantial evidence is "'such relevant evidence as a reasonable mind might accept as adequate
15 to support a conclusion.'" *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017) (quoting
16 *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988)). This requires
17 "more than a mere scintilla," though "less than a preponderance" of the evidence. *Id.* (quoting
18 *Desrosiers*, 846 F.2d at 576).

19 The Court must consider the administrative record as a whole. *Garrison v. Colvin*, 759
20 F.3d 995, 1009 (9th Cir. 2014). The Court also must weigh both the evidence that supports, and
21 evidence that does not support the ALJ's conclusion. *Id.* The Court may not affirm the decision
22 of the ALJ for a reason upon which the ALJ did not rely. *Id.* at 1010. Rather, only the reasons the
23 ALJ identified are considered in the scope of the Court's review. *Id.*

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The claimant's allegations of significant symptoms and limitations related to her Crohn's disease are inconsistent with the medical evidence. The claimant alleged having to use the bathroom 4 to 5 times per day. However, the medical evidence shows the claimant's weight has remained relatively stable throughout the period at issue (*See* Exs. 2F/80, 171, 211; 5F/248, 355; and 8F/3, 29) and treatment providers repeatedly noted she was negative for weight loss (Exhibit 5F/257, 328, 361). Treatment providers also noted that she was constipated at times, where she went 4 to 5 days without a bowel movement (Exhibit 2F/171; and 5F/361, 413). The claimant also alleged having recurring abdominal pain. However, she was repeatedly negative for abdominal pain (Exhibit 2F/82, 95, 104, 196; and 5F/293, 330, 349, 398). Furthermore, the medical evidence shows few documented Crohn's flare-ups throughout the period at issue.

Specifically, plaintiff argues the ALJ erred in not mentioning the following objective medical findings in discounting plaintiff's allegations:

- AR 1237, 1769.

ORDER AFFIRMING THE COMMISSIONER'S DECISION
TO DENY BENEFITS - 3

1 evidence is sufficient to support more than one outcome, the Court uphold the decision the ALJ
2 made. *Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008).

3 The Court, however, may not affirm by locating a quantum of supporting evidence and
4 ignoring the non-supporting evidence. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Unless
5 there is “affirmative evidence” of malingering, *Garrison*, 759 F.3d at 1015, the ALJ may
6 discredit a claimant’s symptom testimony “only by offering specific, clear and convincing
7 reasons for doing so.” *Trevizo*, 871 F.3d at 678. “General findings are insufficient; rather, the
8 ALJ must identify what testimony is not credible and what evidence undermines the claimant’s
9 complaints.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lester*, 81 F.3d at
10 834). In doing so, the ALJ may use “ordinary techniques of credibility evaluation,” such as
11 inconsistencies in the claimant’s statements or between the claimant’s statements and conduct,
12 unexplained or inadequately explained failure to seek or follow treatment, and the claimant daily
13 activities. *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012).

14 The credibility determination is not to evaluate “character” -- it is an assessment of the
15 claimant’s testimony and other statements “designed to ‘evaluate the intensity and persistence of
16 symptoms.’” *Trevizo*, 871 F.3d at 678 n.5 (warning that the inquiry should not “delve into wide-
17 ranging scrutiny of the claimant’s character and apparent truthfulness”) (quoting and citing SSR
18 16-3p, 2017 WL 5180304).

19 An ALJ may discount a claimant’s testimony on the basis that it is unsupported by
20 objective medical evidence. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). The ALJ did
21 not err in this case by discounting plaintiff’s credibility on this basis.¹

22
23 ¹ An ALJ may not reject a claimant’s testimony solely on the basis of a lack of objective medical support. *Burch*,
24 400 F.3d at 680. The ALJ, however, did not discount plaintiff’s credibility solely on the basis of lack of such
support, but provided several other reasons for doing so (AR 28-32) and plaintiff does not challenge the validity of
those reasons.

1 Although plaintiff emphasizes portions of the medical record that contain objective
2 medical evidence, AR 1237, 1769, those portions do not reveal any additional functional
3 limitations. The ALJ thus did not err in failing to specifically discuss them. *Matthews v. Shalala*,
4 10 F.3d 678, 680 (9th Cir. 1993) (“The mere existence of an impairment is insufficient proof of a
5 disability.”); *see also Gentle v. Barnhart*, 430 F.3d 865, 868 (7th Cir 2005) (“Conditions must
6 not be confused with disabilities”); *Higgs v. Bowen*, 880 F.2d 860, 863 (6th Cir. 1988) (“The
7 mere diagnosis of [an impairment] . . . says nothing about the severity of the [diagnosed]
8 condition”).

9 For the same reasons, the ALJ did not err in failing to account for any additional or more
10 severe limitations due to plaintiff’s Crohn’s disease in the RFC assessment. An RFC assessment
11 is used to determine whether the claimant can perform other work existing in the national
12 economy. Social Security Ruling (“SSR”) 96-8p, 1996 WL 374184, at *2. RFC is the maximum
13 amount of work a claimant can perform based on all of the relevant evidence in the record. *Id.* In
14 assessing RFC, the ALJ must discuss why a claimant’s “symptom-related functional limitations
15 and restrictions can or cannot reasonably be accepted as consistent with the medical or other
16 evidence.” *Id.* at *7.

17 Here, the ALJ found plaintiff could perform light work with certain additional postural
18 and environmental limitations, including a limitation on overhead reaching. AR 27. Although
19 plaintiff points to items of medical evidence that apparently are consistent with her later
20 *diagnosis* of Crohn’s disease – the record does not suggest additional severe functional
21 limitations beyond what was already accounted for in the RFC. The ALJ did not err, therefore, in
22 assessing plaintiff’s RFC.

23 CONCLUSION

24 The ALJ properly determined plaintiff to be not disabled. The Commissioner’s decision

1 to deny benefits, accordingly, is AFFIRMED.

2 Dated this 21st day of December, 2018.

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6 Theresa L. Fricke
7 United States Magistrate Judge
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